IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5190 of 1998

Date of decision: 23-9-98

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

AHMEDABAD MUNICIPAL CORPORATION

Versus

SK INDUSTRIES

Appearance:

Mr. M. R. Raval for the appellant.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/09/98

ORAL JUDGEMENT

This appeal is directed by the Municipal Corporation of the City of Ahmedabad against the judgment and order dated 27-9-1991 of the Small Cause Court No.2, Ahmedabad, in M.V.A. No.2882 of 1989. Under the impugned order the Court below has allowed the appeal of the respondent herein, and the property tax bill No.3101 dated 26-12-1988 in respect of the premises bearing M.C.No.672/20/19 in Ward Naroda-A for Rs.58,559/- was quashed and also the Gross Rateable Value of the said premises fixed by the respondent at Rs.34,330/- for the year 1988-89 was quashed.

2. The premises in question were assessed by the appellant for the first time at gross rateable value of Rs.1,09,100/- for the assessment year 1986-87 and 1987-88. Later on the appellant reduced the gross rateable value of the premises to Rs.47,760/- for both the years 1986-87 and 1988-89. The respondent, feeling aggrieved by this amended rateable value fixed for the premises preferred M.V.A.No.3754/1988 which was decided on 7-12-1990 and the learned Judge has quashed the assessment of Rs.47,760/- for both the years 1986-87 and 1987-88. The learned Judge also quashed the property tax bill No.2966 dated 27-4-1987 for both the aforesaid years.

3. For the assessment year 1988-89 the gross rateable value of the premises was fixed at Rs.34,330/-. That has been done on the basis of the reduced gross rateable value of the premises for the assessment years 1986-87 and 1987-88, said to be done at the request of the respondent. But the court below was correct to say that once the assessment of gross rateable value of the premises and consequent demand of tax thereon on the basis of the assessment for the years 1986-87 and 1987-88 has been quashed by the court earlier, there could not have been any assessment of the premises of adopting same entry for those years. The lower court is correct to say that the Corporation could not adopt the same entry of Rs.34,330/- and fix the gross rateable value of the premises for the year 1988-89 also at Rs.34,330/-. This can only be done by the Corporation by serving special notice upon the respondent proposing to fix the gross rateable value at Rs.34,330/for the year 1988-89. It is not in dispute that this procedure has not been followed before assessing the gross rateable value of the premises at Rs.34,300/- for the year 1988-89. I do not find any illegality in the judgment of the court below impugned in this appeal. I am constrained to observe that this

appeal filed by the Corporation is nothing but only an action in futility. This judgment was given in the year 1991 and the assessment of gross rateable value of the disputed premises and the consequent demand of tax on the basis thereof have been quashed and set aside by the court below on the ground of not following the prescribed procedure before fixing the gross rateable value of the premises, instead of filing this appeal the error or irregularity or, may be, illegality committed by the Corporation could have been rectified and accordingly the gross rateable value of the premises as well as the demand of tax thereon could have been done long back. This appeal illustrates how unreasonable and mechanically the Corporation acts in the matter of filing of appeal. This court is constrained to observe that the approach of the Corporation, and more so its officers and functionaries seems to be determined not to allow any of the order of the court below, passed against the Corporation, to remain unchallenged. That approach is wholly perverse and arbitrary, more so in a case where the Corporation is a 'State' or agency or instrumentality of the State within the meaning of Article 12 of the Constitution of India. Not only this, instead of unnecessarily wasting its money in this uncalled for litigation, rather than correcting its own illegality, irregularity or errors, as pointed out by the court below, the Corporation is in fact and in substance causing loss to the people at large. This money could have been utilised for the welfare of and providing amenities and facilities to the people of the City of Ahmedabad.

4. In the result this appeal fails and the same is dismissed. Dismissal of this appeal will not come in the way of the Corporation to fix the gross rateable value of the premises for the year in dispute and for subsequent years in accordance with law.

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csm.